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IN THE

Supreme Court of the United States

October Term, 1962

No. [redacted] 61

ETHEL MEYER,

Petitioner.

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Ethel Meyer, respectfully prays that a writ of certiorari issue to the United States Court of Appeals for the Second Circuit to review the judgment of that Court entered in this case on October 24, 1962, only insofar as petitioner, individually, is concerned, which affirmed a judgment of the United States District Court for the Southern District of New York in respondent's favor and against petitioner individually and as executrix of the estate of Peter Meyer, deceased, for the sum of $11,911.69, based upon a motion for summary judgment (R. 33a-34a, 38a).

The United States District Court for the Southern District of New York in its opinion granted respondent's motion for summary judgment against petitioner, who was sued individually and as executrix of the estate of Peter Meyer, deceased (R. 28a). The respondent, however, caused judgment to be entered only as against petitioner individually (R. 29a). Thereafter, by amended judgment, judgment was entered against petitioner individually and as executrix of the estate of Peter Meyer, deceased (R. 33a-34a). The petition for review herein is brought by petitioner in her individual capacity only to review the judgment of the United States Court of Appeals affirming the judgment entered against petitioner individually, and is not brought to review the said judgment affirming judgment against the estate of the said Peter Meyer, deceased, of which petitioner is the executrix.

Opinions Below

The opinion of the United States District Court for the Southern District of New York (R. 26a-28a) is reported in 202 F. Supp. 606, a copy thereof is set forth in the Appendix, *infra*, page 17. The opinion of the Court of Appeals for the Second Circuit (R. 38a) is reported in 309 F. 2d 131. A copy thereof is set forth in the Appendix, *infra*, page 19.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit sought to be reviewed is dated October 24, 1962, and said judgment was entered on October 24, 1962 (R. 38a-39a). A copy thereof is set forth in the Appendix *infra*, page 21.

Title 28, United States Code, Sec. 1254(1), confers on this Court jurisdiction to review said judgment of the Court of Appeals for the Second Circuit by writ of certiorari.

Questions Presented

(1) Where under New York law the proceeds of policies of life insurance payable to the widow, the beneficiary, are exempt from claims of creditors of the deceased insured, and the said deceased insured during his lifetime pledged and assigned in 1943 said policies to a bank as collateral security for the repayment of loans to the full amount of the surrender values of the policies (except for the sum of $441.21), prior to the tax liabilities of the said insured deceased which arose for the calendar years 1945 and 1946, and prior to assessments and notices and demands for payment for which were made in 1946 and 1947, and where the bank aforementioned received payment directly from the said insurance companies after the date of death of the insured to the full amount due on said loans, thus receiving the full surrender values of the policies (except for the sum of $441.21), and where the petitioner received from the insurance companies the balance of the proceeds of said policies, after death of the deceased insured, which balance formed no part of the cash surrender value (except for the sum of $441.21 which petitioner had offered to pay to respondent), was the decision of the United States Court of Appeals for the Second Circuit in affirming summary judgment against petitioner individually for the amount representing the tax liabilities of the deceased insured, contrary to the rule of law applicable to the case at bar, that the proceeds of the life insurance policies, except for the surrender values, are not property or rights to prop-

erty to which a lien of the United States, respondent, could attach, under Title 26, United States Code, Sec. 6321?

(2) Did the United States Court of Appeals for the Second Circuit correctly affirm the summary judgment against petitioner by marshalling the bank's prior claim against the balance of the proceeds at the insured's death on the basis of the decision of *United States* v. *Behrens*, 230 F. 2d 504 (2d Cir. 1956) cert. denied, 351 U. S. 919, even though in the *Behrens* case it was stated by the Court that the United States did not claim that it could recover, if no lien had attached to the surrender values during the lifetime of the insured?

(3) Did the United States Court of Appeals for the Second Circuit correctly apply to the case at bar the marshalling theory advanced in the case of *United States* v. *Behrens*, 230 F. 2d 504 (2d Cir. 1956) cert. denied, 351 U. S. 919, in which latter case the Government's tax lien did attach to the surrender values of life insurance policies during the lifetime of the insured, by reason of an assessment made prior to a bank pledge of the policies, but which tax lien for reason of non-filing had no priority over the pledge, thereby creating a tax lien against the surrender values, subject, however, to the pledge?

(4) Did the United States Court of Appeals for the Second Circuit correctly apply the foregoing marshalling theory to the case at bar where (with the exception of the sum of $441.21) no tax lien had attached to the cash surrender values of the policies during the life of the insured by reason of prior assignment and pledge to the bank?

(5) Did the United States Court of Appeals for the Second Circuit correctly affirm the summary judgment against the petitioner who did not receive any cash surrender values of the policies with tax liens attached (except $441.21), but received the remaining proceeds of the policies, which were exempt from tax liens by reason of Section 166 of the Insurance Law of the State of New York?

(6) Is the marshalling doctrine applicable to tax liens with respect to proceeds of life insurance exempt under State law, and if so, under what circumstances?

Statutes Involved

Title 26, United States Code; Section 6321. Lien for taxes:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

Section 6322. Period of lien.

> "Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time."

Insurance Law of the State of New York, Section 166.

Exemption of proceeds and avails of certain insurance and annuity contracts.—

"1. If any policy of insurance has been or shall be effected by any person on his own life in favor of a third person beneficiary, or made payable, by assignment, change of beneficiary or otherwise, to a third person, such third person beneficiary, assignee or payee shall be entitled to the proceeds and avails of such policy as against the creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts of the person effecting the insurance. If any policy of insurance has been or shall be effected by any person upon the life of another person in favor of the person effecting the same or made payable, by assignment, change of beneficiary or otherwise, to such person, the latter shall be entitled to the proceeds and avails of such policy as against the creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts of the person insured; if the person effecting such insurance shall be the wife of the insured, she shall be entitled to the proceeds and avails of such policy as against her own creditors, trustees in bankruptcy and receivers in state and federal courts. If any policy of insurance has been or shall be effected by any person on the life of another person in favor of a third person beneficiary, or made payable, by assignment, change of beneficiary or otherwise, to a third person, such third person beneficiary, assignee or payee shall be entitled to the proceeds and avails of such policy as against the creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts of the person insured and of the person effecting the insurance.

The term 'proceeds and avails' shall include death benefits, cash surrender and loan values, premiums waived, and dividends, whether used in reduction of the premiums or in whatsoever manner used or applied, excepting only where the debtor has, subsequent to the issuance of the policy, actually elected to receive the dividends in cash. The person insured in a case under the first sentence of this subsection or the person effecting the insurance other than the wife of the insured in a case under the second sentence, and the person effecting the insurance under the third sentence thereof, or the executor or administrator of any such persons, or a person entitled to the proceeds or avails of such policy in trust for such persons shall not be deemed a third person beneficiary, assignee or payee. A policy shall be deemed payable to a third person beneficiary if and to the extent that, a facility-of-payment clause or similar clause, in the policy permits the insurer to discharge its obligation after the death of the person insured by paying the death benefits to a third person as herein defined. The provisions of this section shall be applicable whether or not the right is reserved in any such policy to change the beneficiary therein designated, and whether or not the policy is made payable to the person whose life is insured if the beneficiary, assignee or payee shall predecease such person; and no person shall be compelled to exercise any rights, powers, options or privileges under such policy."

Statement of the Case

This action was commenced on September 23, 1958, in the District Court of the United States for the Southern District of New York by the Government respondent against petitioner, Ethel Meyer, individually and as executrix of the estate of her deceased husband, Peter Meyer. The jurisdiction of the District Court was invoked through Sections 1340 and 1345 of Title 28, United States Code, for the reason that this is a civil action arising under the Internal Revenue Laws of the United States and is brought by the United States as a party plaintiff. The answer was served and filed on November 18, 1958.

On June 29, 1943, petitioner's husband, Peter Meyer, the insured under life insurance policies totaling $50,000, pledged and assigned same to the Huntington National Bank of Columbus, Ohio, as collateral security to the bank for the repayment of loans (R. 20a, 22a, 25a, 26a). The amount due on said loans on December 28, 1955, the date of death of the insured, was the sum of $26,844.66 (R. 13a, 20a, 24a, 26a). Said loans represented the full cash surrender value of the policies, less the sum of $441.21 (R. 12a, 25a, 27a). Upon the death of said Peter Meyer, the insurance companies paid to the Huntington National Bank of Columbus, Ohio, the said sum of $26,844.66, and the balance due under said policies was paid by them to petitioner, the beneficiary under the policies (R. 24a).

Subsequent to the pledge and assignment to the bank made on June 29, 1943, the tax liabilities of Peter Meyer arose for the calendar years 1945 and 1946 (R. 22a, 26a). One assessment, pertaining to 1945, was made on May 22, 1946, and notice and demand for payment was made on June 6, 1946, upon said Peter Meyer (R. 5a, 18a). The other assessment pertaining to 1946 was made on June

17, 1947, and notice and demand for payment was made on June 18, 1947, upon said Peter Meyer (R. 5a, 6a, 18a). As a result of said assessments there became due to the United States from Peter Meyer and subsequently from the estate of Peter Meyer the sum of $6,159.09 with interest (R. 7a, 18a). Notice of lien in the sum of $6,159.09 plus interest was filed on July 11, 1955, in the Register's Office, Hall of Records, New York, N. Y. (R. 5a, 6a, 18a, 19a).

Respondent moved for summary judgment against petitioner, individually and as executrix of the estate of her husband, Peter Meyer, which motion was granted (R. 28a), but respondent entered judgment against her individually only (R. 29a). Petitioner appealed from said judgment to the United States Court of Appeals for the Second Circuit on March 14, 1962 (R. 30a). Subsequently, and after serving and filing of petitioner's briefs in the United States Court of Appeals, respondent moved before the United States Court of Appeals to remand the action to the District Court for the purpose of moving before the District Court to amend the judgment *nunc pro tunc* to read that respondent have judgment against petitioner individually and as executrix of the estate of Peter Meyer, deceased, which motions were granted and an amended judgment was signed accordingly (R. 33a, 34a).

Petitioner maintains that judgment was properly entered against the estate of her late husband herein, but that since she was not liable personally, the motion for summary judgment should not have been granted against her personally and that the judgment against her personally should be vacated and set aside.

The position of petitioner with respect to her individual liability was and is to the effect that except for the sum

of $441.21, representing the cash surrender value received by her, which she offered to pay to respondent (R. 12a, 14a, 22a), there is no liability on her part for receiving, after payment to the bank under its assignment and pledge of the policies, the balance of the proceeds of the policies which did not constitute property or property rights of the insured, to which the tax liens of respondent could attach during the life of the insured, by reason of exemption under Section 166 of the New York Insurance Law.

The District Court wrote an opinion (Appendix, p. 17) and granted respondent's motion for summary judgment (R. 28a-29a), on the basis of the decision in the case *United States* v. *Behrens*, 230 F. 2d 504 (2d Cir. 1956), cert. denied; 351 U. S. 919. On appeal, the United States Court of Appeals for the Second Circuit wrote an opinion (Appendix, p. 19) and affirmed the judgment (Appendix, p. 21) in reliance upon the said *Behrens* case, *supra*.

Reasons Relied on for the Allowance of the Writ

1. The United States Court of Appeals has decided an important question of federal law, which has not been, but should be, settled by this Court.

The United States Court of Appeals in affirming the judgment against petitioner individually and holding her liable to the extent of the tax liabilities of her late husband the insured, predicated its decision on the case of *United States* v. *Behrens*, 230 F. 2d 504 (2d Cir. 1956) cert. denied, 351 U. S. 919, which adopted the equitable doctrine of marshalling, as applicable to the remaining proceeds of a life insurance policy (being the face amount less cash surrender value) received by a beneficiary which

are exempt under state law from any claims of creditors. Said remaining proceeds are not considered "property" or "property rights" to which a tax lien may attach under Title 26, United States Code, Section 6321.

United States v. *Bess*, 357 U. S. 51, 55-56 (dec. 1958).

In the case at bar, Section 166 of the New York Insurance Law exempted such proceeds from claims of creditors. Despite the fact that the tax liens herein arose in 1946 and 1947, and did not during the life of the insured attach to the policies' surrender values which were assigned and pledged prior thereto, in 1943, the lower Court adopted the marshalling doctrine expressed in the *Behrens* case under facts there, differing materially from the present case. Petitioner did not receive any part of the surrender value (except for the sum of $441.21) and was held liable, nevertheless.

The United States Supreme Court has not decided any case which applied the marshalling doctrine or theory as expressed in the *Behrens* case, nor under what factual circumstances it will be applied.

Assuming were this Court to determine that the equitable doctrine of marshalling is applicable to tax claims or liens, the *Behrens* case, *supra,* is clearly distinguishable and not applicable herein. The facts in the *Behrens* case, *supra*, were as follows: An assessment of a tax lien was made first, thereby creating a lien on all property, i.e., the surrender value of the policy. However, the tax lien wasn't filed, and therefore it was an inferior lien to that of a bank which had subsequently loaned the insured moneys on assignment and pledge of the policy. But a lien did arise in favor of the Government on the

cash surrender value, which was, however, a secondary lien to that of the bank. As was stated by the Court in the *Behrens* case, *supra*:

> "The tax lien, not being filed, did not indeed have priority over the pledge; * * *."

Significantly, the Court in the *Behrens* case, *supra*, at page 506, said:

> "The United States does not assert that it could recover, if no lien had attached to the 'surrender values' during Behren's life;"

In the case at bar the tax liens arose in 1946 and 1947 and did not during the life of the insured attach to the prior assignment and pledge of the surrender values to the bank for its loan to the insured in 1943. Assuming, therefore, that the marshalling doctrine is applicable to cases involving tax liens as affecting proceeds of life insurance, exempt by state law, the question of when or under what circumstances it is applicable has not been determined by this Court.

The United States Court of Appeals herein endeavored to reconcile the instant case with the *Behrens* case, *supra*, stating: "In the present case by reason of prior pledge of the policies to the bank the government's tax lien was secondary, but it was not nugatory, and the proceeds passed to appellant subject to both claims at the taxpayer's death" (Appendix, *infra*, page 19). It is respectfully submitted that this reasoning can not apply to this case. The prior *assignment and pledge* of the policies to the bank did not leave any cash surrender value (except $441.21), to which the government's tax lien could attach during the life of the insured. Of course, the tax lien of the government was not "nugatory", in the sense that if there were *other* property that it could attach to dur-

ing the life of the insured, it would be effective as to that *other* property. But in this case the tax lien of the government did not attach during the life of the insured since it is evident that there was not only an assignment but a pledge as well to the bank (R. 25a). After assignment and pledge to the bank, the tax lien did not attach during insured's lifetime to said cash surrender values so assigned and pledged to the bank.

Contrary to what the learned lower Court also stated, the proceeds did not pass to petitioner subject to both claims at the taxpayer's death. The bank was paid directly by the insurance company, and petitioner was paid the remaining proceeds not embracing any surrender value (except $441.21) which were exempt from creditor's claims under Section 166 of the Insurance Law of the State of New York.

Also, petitioner did not receive the full amount of the policies and did not pay the "surrender value" or the amount borrowed to the bank, as was the fact in the *Behrens* case. Petitioner received the proceeds of the policies (face amount less amount borrowed) as a beneficiary and not as a creditor.

Clearly, the question presented is of importance in the administration of federal tax laws. Settlement of the question by this Court is plainly in the public interest, since it is likely to be presented in numerous tax claims and liens of the Federal Government affecting proceeds payable to beneficiaries under life insurance policies.

2. The decision of the learned Court below is believed to be erroneous since it has decided the federal question in a way in conflict with applicable decisions of this Court.

It has been shown under number 1. of the "Reasons Relied On for the Allowance of the Writ," that the re-

spondent's tax lien did not during insured's lifetime, attach to the cash surrender values which had been assigned and pledged to the bank for a loan, before even any tax claim existed.

In the case of *Commissioner* v. *Stern*, 357 U. S. 39 (1958), decided two years after the *Behrens* case, *supra*, this Court held that recovery of unpaid federal income taxes from the beneficiary of life insurance in the absence of a lien was disallowed under a state statute (Kentucky) similar to Section 166 of the Insurance Law of the State of New York, applicable herein, exempting proceeds of life insurance from the insured's creditors unless premiums have been paid in fraud of creditors.

The same day that this Court decided the case of *Commissioner* v. *Stern, supra*, it also decided the case of *United States* v. *Bess*, 357 U. S. 51 (dec. 1958), wherein it was held that because of tax liens which had attached to all of the insured's property before his death, the beneficiary was liable to the extent of the cash surrender values of his policies, received by her. The case did not involve any prior pledge, assignment or transfer of cash surrender values, as in the case at bar.

At page 54, the Supreme Court in the *Bess* case, *supra*, stated:

> "If in the instant case no lien were involved, our holding in *Commissioner* v. *Stern* would require an affirmance in No. 395 and a reversal in No. 410, since it is conceded that Mr. Bess did not pay any premiums in fraud of his creditors."

The Court in the *Bess* case, *supra*, in discussing the proceeds of a policy (applicable to the case at bar), as

distinguished from the cash surrender value subject to a tax lien, stated as follows at pages 55-56:

> "Manifestly the insured could not enjoy the possession of the proceeds in his lifetime. His right to change the beneficiary, even to designate his estate to receive the proceeds, gives him no right to receive the proceeds while he lives. Cf. *Rowen* v. *Commissioner*, 215 F. 2d 641, 644. It would be anomalous to view as 'property' subject to lien proceeds never within the insured's reach to enjoy, and which are reducible to possession by another only upon the insured's death when his right to change the beneficiary comes to an end. We therefore do not believe that Mr. Bess had 'property' or 'rights to property' in the proceeds, within the meaning of Sec. 3670 (present Sec. 6321) to which the federal tax lien might attach. *Cannon* v. *Nichols*, 80 F. 2d 934; see *United States* v. *Burgo*, 175 F. 2d 196."

The Court in the *Bess* case went into a full discussion of the applicable law and said at page 57 as follows:

> "The question therefore is whether the cash surrender values with the lien attached were transferred to Mrs. Bess as beneficiary when Mr. Bess died."

In the case at bar, therefore, no lien attached to the prior pledge, transfer and assignment of the cash surrender value to the bank, and the proceeds which petitioner, the widow, received, not embracing any surrender value (except $441.21), was not subject to any tax lien by reason of Section 166 of the Insurance Law of the State of New York.

Petitioner, upon the death of her husband, received as beneficiary the proceeds of the policies, representing the balance after payment to the bank by the insurance companies of the moneys due it on the loan. Thus the only cash surrender value which petitioner received was the sum of $441.21, which were the only moneys subject to the tax liens. All proceeds received by petitioner over and above said sum of $441.21 were entirely exempt and not subject to any tax lien. Said proceeds were not "property" or "rights to property", and were not subject to the tax liens.

United States v. *Bess*, 357 U. S. 51, 55-56 (*supra*); Sec. 166 of the Insurance Law of New York.

For all the foregoing reasons, there was no liability on the part of the petitioner except for the sum of $441.21.

It is therefore respectfully submitted that the learned lower Court decided the federal tax question in a way in conflict with applicable decisions of this Court.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

1. Opinion of the United States District Court for the Southern District of New York

OPINION BY PALMIERI, J.

The United States has moved for summary judgment in an action by it against Ethel Meyer, individually and as executrix of her husband's estate, for $6,159.09, plus interest. This amount is due on taxes assessed against Peter Meyer for the years 1945 and 1946. Notice of the tax assessments was given and demand made in 1946 and 1947 respectively, thereby giving rise to a "lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to" the decedent. 26 U. S. C. §6321.

The Government seeks to recover the money owed it out of insurance proceeds received by Ethel Meyer as the beneficiary of several policies on the life of Peter Meyer. The policies had a face value of $50,000 and a cash surrender value of $27,285.87. The policies permitted decedent to change the beneficiary and to demand the cash surrender value. In 1943, prior to the tax assessments, the insured had pledged and assigned the policies to the Huntington National Bank of Columbus, Ohio, as security for a loan of $26,844.66. Under the terms of the assignment, the bank was given the right to satisfy its claim out of the net proceeds of the policy when it became a claim by death. Upon the death of Peter Meyer the bank was paid $26,844.66 and the remainder of the proceeds were paid to Ethel Meyer.

In *United States* v. *Bess*, 357 U. S. 51 (1958), the Supreme Court held that if the cash surrender value of

a life insurance policy is property under the applicable state law it is property under 26 U. S. C. §6321, and a federal tax lien attaches to it and continues to exist after the taxpayer's death. The defendant does not contest her deceased husband's tax liability nor does she dispute that a federal tax lien may attach to the cash surrender value of life insurance policies. She contends, however, that the debt to the bank was paid out of the cash surrender value, leaving the difference between the cash surrender value of the policy and the amount paid to the bank, $441.21, for enforcement of the Government's lien. This contention is directly contrary to this Circuit's holding in *United States* v. *Behrens*, 230 F. 2d 504 (2d Cir. 1956).

The defendant in *Behrens* was the beneficiary of a number of insurance policies on the life of her husband which had a cash surrender value of $22,000 and a face value of $59,000. The policies had been pledged to a bank for a loan of $17,000 which defendant was obliged to pay. Judge Learned Hand denied her contention that she was entitled to deduct this amount from the cash surrender value and permitted plaintiff to enforce its tax lien against the full amount of the cash surrender value, saying:

> "The tax lien * * * did not indeed have priority over the pledge; but the 'proceeds' were large enough to pay both claims, and it is well settled law that, when one creditor has a claim against two funds as security and another creditor has a claim against only one of them, the loan of the first will be marshalled against that fund which is security for his loan only" (p. 507).

Applying this rule to the instant case, it follows that the Government is entitled to enforce its tax lien against

the full amount of the cash surrender value notwithstanding payment to the bank of the loan for which the policies were assigned and pledged.

Plaintiff's motion for summary judgment is granted. Submit order on notice.

Dated: New York, N. Y.
January 12, 1962

Edmund L. Palmieri

EDMUND L. PALMIERI
U. S. D. J.

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2. Opinion of the United States Court of Appeals for the Second Circuit

PER CURIAM:

The decedent pledged life insurance policies to a bank as collateral security for a loan. Thereafter he was assessed certain deficiencies in payment of income tax. At the time of his death both the loan and the assessments remained unpaid. Payment of the loan exhausted the cash surrender value of the policies except for an amount too small to pay the deficiency assessments. The Government seeks to recover the tax liabilities from the proceeds of the insurance policies.

As the District Court held, 202 F. Supp. 606, this case is controlled by *United States* v. *Behrens*, 230 F. 2d 504 (2d Cir. 1956), *cert. denied*, 351 U. S. 919, which held that

> "when one creditor has a claim against two funds as security and another creditor has a claim against only one of them, the loan of the first will be marshalled against that fund which is security for his loan only." (p. 507).

Appellant attempts to distinguish the *Behrens* case on the ground that in that case the government's assessment was made prior to the taxpayer's pledge of the policies, whereas here the pledge preceded the assessment. Appellant argues that the lien could attach only to the excess of the surrender value over the amount of the loan. But in *Behrens*, the "tax lien, not having been filed, did not indeed have priority over the pledge" (p. 507). In the present case by reason of the prior pledge of the policies to the bank the government's tax lien was secondary, but it was not nugatory, and the proceeds passed to appellant subject to both claims at the taxpayer's death. Whatever the value of the tax lien during the taxpayer's lifetime, it could be fully satisfied out of that portion of the proceeds representing the former cash surrender value by marshalling the bank's prior claim against the balance of the proceeds at his death.

Judgment affirmed.

3. Judgment of the United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the twenty-fourth day of October, one thousand nine hundred and sixty-two.

Present: HON. STERRY R. WATERMAN
HON. PAUL R. HAYS
HON. THURGOOD MARSHALL
Circuit Judges.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ETHEL MEYER, individually and as Executrix of the ESTATE OF PETER MEYER, deceased,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk